

(2023) 03 BOM CK 0065
In the Bombay High Court
Case No : Writ Petition No. 4330 Of 2014

Chatrapati Shivaji Shikshan Prasarak Mandal And Others	APPELLANT
Vs	
Education Officer And Others	RESPONDENT

Date of Decision : 21-03-2023

Acts Referred:

Citation : (2023) 03 BOM CK 0065

Hon'ble Judges : G.S.Patel, J; Neela Gokhale, J

Bench : Division Bench

Advocate : NV Bandiwadekar, AN Bandivadekar, Mandar Limaye, AA Purav

Final Decision : Partly Allowed/Disposed Of

Judgement

Neela Gokhale, J

1. Rule. Since there is an Affidavit in Reply, Rule is made returnable forthwith.
2. The Petitioner impugns a letter dated 13th April 2004 issued by the 3rd Respondent, the Deputy Director of Education. The letter, directs the Education Officer, (Primary) Zilla Parishad, Thane and the Education Officer, Thane Municipal Corporation ("TMC") to convey to the Petitioner that the Petitioner school had unauthorisedly commenced the Ist standard classes after seven years without prior approval of the Government. Therefore, the Petitioner was directed to stop conducting classes for the Ist standard.
3. The Petitioner seeks the following reliefs:
 - "a. That writ of certiorari, for a writ in the nature of certiorari or for any other appropriate writ, direction or order be issued and the records and proceedings of the impugned letter dated 13/04/2004 issued by the Respondent no.3 be called for and after examining the legality, validity and propriety thereof the impugned letter dtd 13/04/2004 issued by the Respondent no. 3 be quashed and set aside.
 - b. That writ of mandamus or a writ in the nature of mandamus or for any other

appropriate writ, direction or order be issued and the Respondents be directed to grant retrospective recognition to its 1st to 4th standards w.e.f. 1997-1998 on aided basis.”

4. The Petitioner No. 1 is a Public Trust registered under the Bombay Public Trust Act, 1950. The Petitioner No.2 is a School managed by the Petitioner No. 1 trust. The Respondent Nos. 1 to 3 are the Education Officer and the Deputy Director of Education of the region in question respectively and the Respondent No. 4 is the State of Maharashtra.

5. Pursuant to an application made by the Petitioner, by a letter dated 27th September 1989, the Competent Authority granted permission to the Petitioner No.1 to open a primary school from the Ist standard on a non-grant basis. After complying with the necessary formalities, the Petitioner commenced the functioning of the primary school from June 1989.

6. Due to some difficulties, the Petitioner was constrained to stop the functioning of the School from the Academic Year 1990–91. The Petitioner re-started the Primary School from the Academic Year 1997–98 with Std. I.

7. Petitioner made representations dated 12th July 1999 and 11th October 2001 and sought permission to conduct classes of Std. II to Std. IV. Various representations were also made to other authorities of the State Government including the Minister in charge of the Education Department.

8. On consideration of a proposal by the Director of Education (Primary), a Government Resolution dated 9th April 2003, sanctioned 168 additional classes on a non-grant basis in primary or upper primary schools in the State. The Government Resolution listed the schools which were accorded the aforesaid sanction. The name of the Petitioner School was included in this list. Thus, the Petitioner started running the Primary School with Std. I to Std. IV from the Academic Year 1998–99. However, despite a number of requests the Respondent authorities failed to issue the said permissions/approval in writing in furtherance of the Government Resolution dated 9th April 2003.

9. Strangely, the Respondent No.3, by way of the impugned letter dated 13th April 2004, conveyed to the Petitioner No.1 Management that its primary school was ‘unauthorized’. It is this letter that is impugned in the present Writ Petition.

10. The learned senior counsel for the Petitioners, Mr NV Bandiwadekar, contended that the order dated 13th April 2004 cannot be sustained since the Ist Std. of the Petitioner School had already been recognized by the Government in the Academic Year 1989–90. He further pointed out that the Government of Maharashtra, by its Government Resolution, has also granted recognition to the classes from Std. II to Std. IV and hence cancelling the said permission unilaterally was erroneous. The Petitioner had made representations dated 2nd September 2005 and 9th September 2008 and brought to the notice of the Government that as many as 252 students from the remote area of

Kasarwadawali were enrolled in the school and closing down the running school would adversely affect the students. Considering these representations, officials of the Petitioner No.1 were called for a hearing before the Education Minister. The officials of the Petitioner attended the 'hearing' but till date, they have not been given any intimation about any decision taken by the authorities concerned.

11. The Petitioners have further relied upon a report dated 7th October 2008 of the Education Officer of TMC School Board, forwarded to the Deputy Director of Education, Mumbai clearly conveying that the Primary School has been regularly functioning from the Academic Year 1997-98 and that as many as 481 students from economically and socially backward population in the region were taking education in the school. The Education Officer also recommended that approval be given to the Petitioner for running the school.

12. The 4th Respondent has filed its Affidavit in Reply. While admitting that permission was accorded for conducting classes of the primary school of the Petitioner along with other 165 classes in pursuance of Government Resolution dated 9th April 2003, the 4th Respondent has contended that the Government approval was 'unknowingly' given to the Petitioner School. Subsequently, it was noticed that prior permission/approval was not obtained by the Petitioner School before re-starting the school and hence, it was directed to cancel the order of sanctioning additional classes to the said school. This prompted the impugned letter dated 13th April 2004.

13. The 4th Respondent, in its Reply, has fairly conceded that the report of the Education Officer pertaining to the Petitioner School reveals that the said school is running Ist to IVth Std. classes and as many as 481 students are enrolled in the school. The school has six class rooms, one room for the head-master, separate toilets for girls and boys, drinking water facilities, a ramp, play ground, etc., and educational material and a library facility have also been made available to the children. The institute has appointed twelve trained teachers and two peons in the school. The school runs in two shifts. The land of the school is owned by the institute itself. Having conceded this factual position, nevertheless, the 4th Respondent has justified cancellation of permission to run the said school only on the ground that the Petitioner had not taken prior permission of the Competent Authority before re-starting the said school. The 4th Respondent has however, contended that in the educational interest of the students, the Government has already issued an order dated 28th March 2019 permitting the school to run on a self-finance basis. The respondent has however, refused to grant aid to the school.

14. The short question which arises for consideration is whether the cancellation of approval to the Petitioner School for conducting classes from Std.I to Std.IV, and the impugned letter dated 13th April 2004, is legally sustainable and whether a mandamus can be issued to the Respondents to grant retrospective recognition to its school on an aided basis.

15. It is an admitted position that the Petitioner was permitted to conduct Std. I classes in the primary school by letter dated 27th September 1989. Accordingly, the Petitioner School commenced classes from the Academic Year 1989-90. On account of diverse difficulties, the Petitioner was compelled to stop the functioning of the school till 1997. Thereafter upon development of the said region and on a demand for education for socially and economically backward children of the region, the Petitioner School decided to re-start its functioning. As seen from the Government Resolution dated 9th April 2003, the Government had also granted approval to the Petitioner School, amongst other schools, to conduct classes for Std.I to Std.IV. Thus, the Petitioner was running the school on the basis of approval accorded by the Government by the aforesaid Government Resolution. Furthermore, the 4th Respondent has also admitted that Government has already issued an order dated 28th March 2019 sanctioning permission to run the school on a self-finance basis.

16. The report of the Education Officer also indicates that the School was being run efficiently and facilities such as play-ground, educational material, library, trained teachers, etc., were being provided to the children, who would otherwise be deprived of educational opportunities in that region. The only justification for refusing regular sanction to the school appears to be that the School had failed to seek specific permission from the authorities to re-start the school after a period of seven years. This does not appear to be justified at all, especially in view of the inclusion of the name of the Petitioner School in the list of schools granted approval and attached to the Government Resolution dated 9th April 2003.

17. It is true that the Petitioner has filed this Writ Petition seeking quashing of the impugned letter dated 13th April 2004 after a period of almost 10 years. However, it can be seen from the record that the Petitioner School had been consistently pursuing the Government Departments for redressal of its grievance. Moreover, the Petitioner had also been granted a hearing before the Education Minister himself. However, no decision had been communicated to the Petitioner regarding their request for regularisation/approval with retrospective effect. The refusal for approval also does not have any substantial basis, save and except that the Petitioner had failed to seek approval prior to re-starting of its primary school. In these circumstances, the delay in approaching this Court is not such as would hinder us in granting relief that is otherwise justified. The educational facilities created by the Petitioner School in the said region is good enough reason to condone the delay in approaching this Court.

18. The impugned letter is therefore quashed and set aside.

19. In so far as directing the Respondent to grant aid to the Petitioner School with retrospective effect is concerned, that is a matter of policy of the Respondent and a mandamus cannot be issued in that regard. The letter dated 27th September 1989 giving initial approval for running the primary school was purely on a non-grant basis. Thereafter, the Petitioner School has cited the GR

dated 9th April 2003 as its source of approval to conduct classes of Std. I to Std. IV. Hence, the conditions mentioned in the GR must apply to the Petitioner School. Moreover, the Petitioner has not challenged the order dated 28th March 2019 issued by the Government, sanctioning permission to the Petitioner on self-finance basis. The Petitioner School is at liberty to seek aid from the Government by following the appropriate procedure in that regard.

20. The Writ Petition is, therefore, partly allowed. Rule is made partly absolute in these terms.

21. There will be no order as to costs.